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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTHEW VARGHESE and NUWAN SENARATNA

Appeal 2017-002436
Application 13/756,360
Technology Center 3600

Before JOSEPH L. DIXON, THU A. DANG, and BARBARA A. BENOIT, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants[1] appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–14. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

According to Appellants, the invention is directed to reviewing advertisements and providing feedback about advertisements in an online system. Spec. ¶ 1.

B. ILLUSTRATIVE CLAIM

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[1] According to Appellants, the real party in interest is Facebook, Inc. Br. 2.

Claim 1 is exemplary:

1. A computer implemented method comprising:

receiving, via a graphical user interface of an online system, a portion of an advertisement from an advertiser;

identifying a plurality of components of the advertisement submitted by the advertiser;

generating one or more tags describing characteristics of a component of the advertisement, wherein the one or more tags describing characteristics of the component are independent of the policy of the online system;

storing the generated one or more tags and data describing the component of the advertisement associated with the one or more tags;

determining whether one or more of the submitted components violates one or more policies of the online system based on the generated one or more tags; and

responsive to determining that a component of the submitted advertisement violates a policy of the online system, before receiving all the components of the advertisement from the advertiser, providing the advertiser with a message in the graphical user interface that the component violates the policy of the online system.

C. REJECTIONS

1) Claims 1–14 stand rejected under 35 U.S.C. § 101.

2) Claims 1–7 stand rejected under 35 U.S.C. § 103 over Badros et al. (US 2006/0149623 A1; published July 6, 2006) and Flemma, Jr. et al. (US 8,639,544 B1; issued Jan. 28, 2014).

3) Claims 8–14 stand rejected under 35 U.S.C. § 102(b) over Badros.

II. ISSUES

The principal issues before us are whether the Examiner erred in finding that:

1. The claimed "computer implemented method" comprising "generating . . . tags describing characteristics of a component of the advertisement;" "determining whether one or more of the submitted components violates one or more policies of the online system based on the generated one or more tags"; and providing the advertiser with a message that the component violates the policies "responsive to determining that a component of the submitted advertisement violates a policy" and "before receiving all the components of the advertisement from the advertiser" (claim 1) is directed to patent ineligible subject matter.

2. Badros teaches or suggests providing an advertiser with "a message in the graphical user interface that the component violates the policy of the online system" which is "responsive to determining that a component of the submitted advertisement violates a policy" of the online system, "before receiving all the components of the advertisement from the advertiser." *Id.*

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Appellants' Invention

1. Appellants recognize that manual review of advertisement for compliance with online policies is a time consuming process that is not scalable as the number of providers promoting their products increases, and may lead to inconsistent reviews (Spec. ¶ 3), while many rejected advertisements that are modified and re-submitted multiple times would further increase number of review. *Id.* ¶ 4. Accordingly, the invention

divides new advertisements into components, separately reviews each component, and stores the analyzed components. *Id.* ¶ 6. In one embodiment, the invention uses the stored results of image analysis to save advertisement analysis time. *Id.* ¶ 7.

Badros

2. Badros discloses a system for automatically checking advertisements for compliance with policies of an online ad serving system. Badros, Abst. Figure 5 is reproduced below:

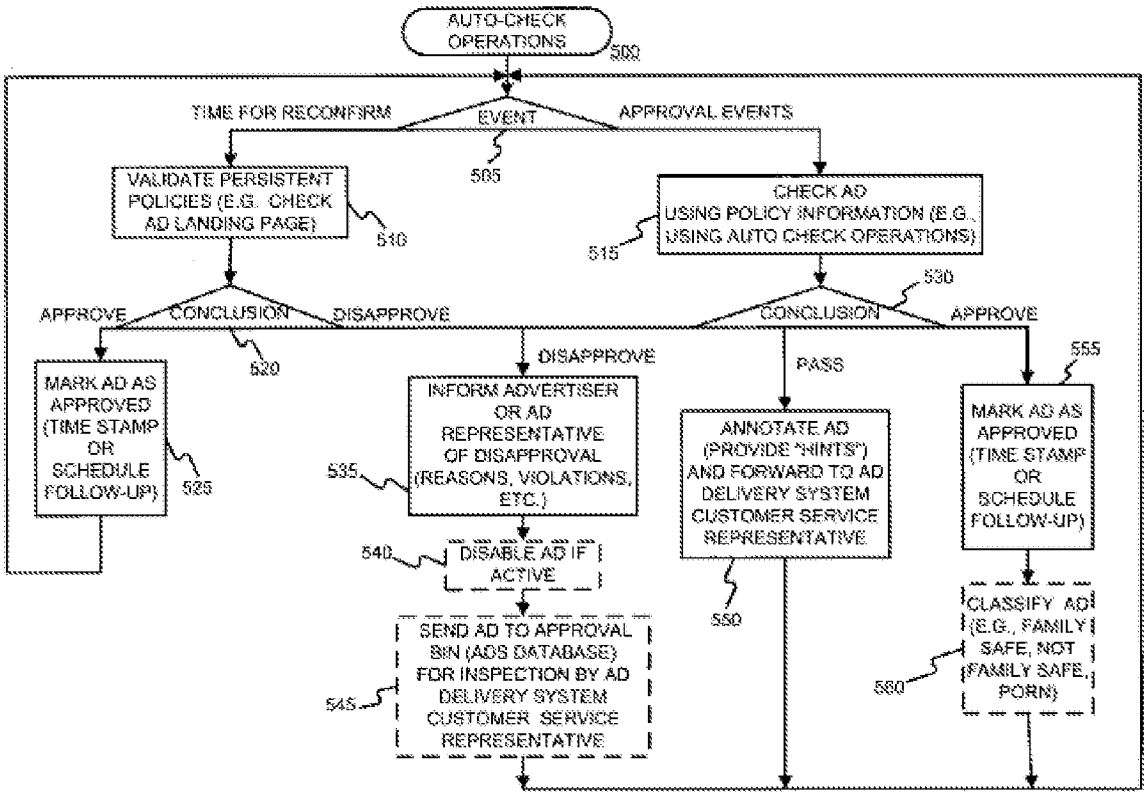

FIGURE 5

Figure 5 shows different branches of a method 500 that may be performed in response to different events. *Id.* ¶ 60. After checking an ad using policy information (block 515), the ad can be approved, disapproved,

or passed (block 530). *Id.* After an ad is approved, it is made available for serving (*id.* ¶ 42) to potential customers. *Id.* ¶ 38.

The advertisers can submit ads "(new or modified)" and/or exemption requests via an advertiser self-service user interface. *Id.* FIG. 2, ¶ 44. The interface can warn the advertiser that its ad will not be approved unless it obtains an exemption request (and perhaps passes an exemption request to an ad delivery system customer service representative). *Id.* ¶ 44. The user interface can include hints or annotations including checkboxes, dialog, and a dynamic GUI to prompt for extra information. *Id.* ¶ 96.

IV. ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' arguments presented in this appeal. Arguments which Appellants could have made, but did not make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

On the record before us, we are persuaded the Examiner has erred in finding claims 1–14 unpatentable under 35 U.S.C. § 101, but we are unpersuaded the Examiner has erred in finding claims 1–7 unpatentable under 35 U.S.C. § 103(a) and 8–14 anticipated under 35 U.S.C. § 102(b). We adopt as our own the findings and reasons set forth in the rejections from which the appeal is taken and in the Examiner's Answer, and provide the following for highlighting and emphasis.

Rejection Under 35 U.S.C. § 101

The Supreme Court's two-step framework guides our analysis of subject-matter eligibility under § 101. *See Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). According to step one, "[w]e must first

determine whether the claims at issue are directed to a patent-ineligible concept," such as an abstract idea. *Id.* *Alice* step one "calls upon us to look at the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

If the claims are directed to an abstract idea, the claims are analyzed under step two to determine whether the limitations, when considered both "individually and 'as an ordered combination,'" contain an "inventive concept" sufficient to transform the claimed abstract idea into a patent eligible application. *Alice* at 2355–58. *See also Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) ("Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination.").

Appellants argues that independent claim 1 is more than a well-understood, routine, and conventional function recited in a generic manner, and does not simply process data, but generates tags that are independent of the policy of the online system. *Id.* 8. Appellants contend that the claims cannot exist without a computer or machine and, like *DDR Holdings*, the claimed invention recites a specific way to review an advertisement that is more than just generally using a computer to perform a business practice. *Id.*, 8–9, citing *DDR Holdings, LLC v. Hotels.com*, L.P., 773 F.3d 1245, 1257 (Fed. Cir. 2014).

Further, Appellants argue that the invention represents an improvement to the functioning of the computer, reducing processing needed to evaluate certain components of an advertisement. *Id.* at 9; Reply

Br. 3–4. According to Appellants, the claimed system can reduce computer processing, and reduce revenue lost by the online system caused by delays in advertisement review (Br. 9, citing Spec. ¶¶ 5, 14).

The Examiner determines that claim 1 encompasses concepts similar to those previously identified as abstract ideas by the courts, such as *Ultramercial, Inc. v. Hulu, LLC*, 112 USPQ2d 1750 (Fed. Cir. 2014); *SmartGene, Inc. v. Advanced Biological Laboratories, SA*, 555 F. App'x 950 (Fed. Cir. 2014); and *buySAFE, Inc. v. Google, Inc.*, 112 USPQ2d 1093 (Fed. Cir. 2014). Ans. 4, 6–7. The Examiner also determines that the claims merely require "additional computer elements, which are recited at a high level of generality." *Id.* at 3.

Based on the record before us, however, we are persuaded by Appellants' arguments that claim 1 encompasses more than a well-understood, routine, or conventional activity. *Berkheimer*, 881 F.3d at 1369–70. Contrary to the Examiner's reasoning, the Federal Circuit has considered usefulness and improvements compared to prior-art systems and methods when analyzing patent-eligibility issues. *See, e.g., BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350–51 (Fed. Cir. 2016); *see also Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1362–63 (Fed. Cir. 2018).

Here, we find that the specificity of the technical solution and the particular arrangement of elements required by the claims more closely resembles claims considered patent eligible by the Federal Circuit compared to the patent-ineligible claims in the decisions the Examiner cites. *See Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841F.3d1288, 1299–1306

(Fed. Cir. 2016); *BASCOM*, 827 F.3d at 1349–51; *Trading Techs. Int'l, Inc. v. CQG, Inc.*, 675 F. App'x 1001, 1002–05 (Fed. Cir. 2017).

For instance, in *Trading Technologies*, the claimed method and system reduced the time for a trader to place a trade when electronically trading on an exchange, which "thus increas[ed] the likelihood that the trader will have orders filled at desirable prices and quantities." *Id.* at 1003.

In the present application, systems and methods as claimed beneficially display graphical feedback to an advertiser "*responsive* to determining whether a *component* of the submitted advertisement violates a policy" of the online system "*based on . . . generated . . . tags* [describing characteristics of the component]," which occurs "*before receiving all* the components of the advertisement." *See* Br. 8–9; claim 1 (emphasis added). The claims recite a technical solution at least as specific as the technical solution recited in the claims at issue in *Trading Technologies*. *See* 675 F. App'x at 1003; *see also Trading Techs. Int'l, Inc. v. CQG, Inc.*, No. 05-CV-4811, 2015 WL 774655, at *1–2 (N.D. Ill. Feb. 24, 2015).

For at least the reasons discussed above, Appellants' arguments have persuaded us that the Examiner erred in rejecting claim 1 under § 101. On the record before us, we do not sustain the § 101 rejection of the independent claims.

Rejection Under 35 U.S.C. § 103(a)

Although Appellants acknowledge that Badros shows informing the advertiser of disapproval of an ad, Appellants contend that Badros does not teach informing via the graphical user interface, or providing "before receiving all the components of the advertisement." Br. 11–12 (emphasis added). In particular, Appellants further argue that while Badros undertake

steps after an advertisement is disapproved (*id.* at 13) and provide a GUI (*id.* at 14), Badros does not undertake these steps until *after* the advertisement has been checked. *Id.* at 13–14. Further, although Appellants acknowledge Badros shows a dynamic GUI that presents information and prompts for extra information as needed, Appellants contend that the information is hints or annotations provided to a customer service representative, and not to the advertiser, so they would not be in the same GUI used for receiving the advertisement from the advertiser. *Id.* at 14; Reply Br. 6.

We have considered all of Appellants' arguments and evidence presented. However, we are unpersuaded by Appellants' contentions regarding the Examiner's rejections of the claims under 35 U.S.C. § 103(a). We agree with the Examiner's conclusion that claims would have been obvious over the combined references.

Here, we find no error with (and Appellants do not contest) Examiner's reliance on Badros for disclosing "providing the advertiser with a message" that "the component violates a policy of the online system." Ans. 9; Final Rej. 7–8. Further, we agree with the Examiner's finding that Badros teaches and suggests a system where "providing the advertiser with a message" occurs "before receiving all the components of the advertisement from the advertiser." Ans. 9; FF 2 (emphasis added). In particular, Badros discloses that the submitted ad is checked for compliance using the advertiser self-service user interface, before being received by the customer. FF 2. Thus, we find no error with the Examiner's finding that Badros at least suggests that the advertiser at the self-service user interface is provided with the compliance message *before* the customer receives the ad. *Id.*

We are also not persuaded by Appellants' argument that Badros does not show providing the advertiser with a component violation message "in the graphical user interface." App. Br. 13–14. Instead, we agree with Examiner's finding that Badros shows the use of the GUI with an advertiser self-service user interface, wherein ad approval components are communicated to advertisers about any violation. Ans. 9–10; FF 2. In particular, in Badros, the advertiser submits new or modified ads via the self-service user interface (FF 2) and the *same* self-service user interface can also include hints or annotations including checkboxes, dialog, and a dynamic GUI to prompt for extra information, so that the advertiser can submit them again. *Id.*

We note that, while Badros does show an embodiment that forwards an ad to a customer service representative to make a final decision on whether the ad is approved or not (*id.*), Badros also shows providing advertiser with a violation message in the self-service graphical user interface. *Id.* Like Appellants' graphical user interface (FF 1), Badros's self-service user interface uses a GUI to communicate with the advertiser, and upon disapproval, anticipates a "modified" advertisement to be submitted by the advertiser. FF 2.

Accordingly, we agree with the Examiner's finding that Badros teaches and suggests providing an advertiser with "a message in the graphical user interface that the component violates the policy of the online system" which is "responsive to determining that a component of the submitted advertisement violates a policy" of the online system, "before receiving all the components of the advertisement from the advertiser." Claim 1.

Based on this record, we find no error with Examiner's rejection of claim 1 over Badros in view of Flemma. Appellants do not provide substantive arguments but rather merely repeat the arguments above with respect to dependent claims 2–7 (App. Br. 10–14). Thus, we also affirm the rejections of claims 2–7 over Badros in view of Flemma.

Rejection Under 35 U.S.C. § 102(b)

With respect to the rejection of claims 8–14, Appellants merely repeat that "[a]s discussed above *with respect to claim 1*, Badros does not teach *or suggest*" the contested limitation (App. Br. 15, emphasis added). However, we note that the claims are rejected under 35 U.S.C. § 102(b) over Badros, wherein the question we address here is whether the contested limitation "is found, either expressly or inherently described" Badros. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). By repeating the same arguments with respect to the obviousness rejection of claim 1 under 35 U.S.C. § 103(a), Appellants have waived any separate arguments to claims 8–14 regarding patent eligibility under 35 U.S.C. § 102(b). *See* 37 C.F.R. § 41.37(c)(l)(iv)..

As discussed above, we find no error with respect to the Examiner's finding that Badros discloses or suggests the contested limitation in claim 1. Based on this record, we find Appellants also have not shown reversible error in the rejection of claims 8–14 over Badros under 35 U.S.C. § 102(b).

V. CONCLUSION AND DECISION

We affirm the Examiner's rejections of claims 1–7 under 35 U.S.C. § 103(a) and of claims 8–14 under 35 U.S.C. § 102(b). However, we reverse the Examiner's rejection of claims 1–14 under 35 U.S.C. § 101.

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. *See* 37 C.F.R. § 41.50(a)(l).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED